



MAY 1985

NEWSLETTER OF THE LONDON CHAPTER
ONTARIO ARCHAEOLOGICAL SOCIETY



85-5

IN THE PROVINCIAL OFFENCES COURT

IN THE MATTER OF: THE ONTARIO HERITAGE ACT,
Section 69(1).

HER MAJESTY THE QUEEN

against

PARKIN, George
RICHER, Gary
JACKSON, Gordon

SENTENCING

Given by His Worship, R. Robins, Justice of
the Peace, at the Provincial Offences Court,
32 James Street South, Hamilton, Ontario, on
Wednesday, May 1st, 1985.

APPEARANCES:

| | |
|-------------------|--|
| D. Katzman, Esq. | Counsel on behalf of the Crown |
| B. DeRubeis, Esq. | Counsel on behalf of the three accused. |

Chapter
Executive

President

Robert Pihl (225-2527)
R.R. #1, Granton

Vice-President

David Smith (473-1360)
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Unit 38-159 Sandringham Cres., London

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EXECUTIVE REPORT

All our executive were present at the April 25 meeting where it was announced that phase one of our symposium promotion campaign had been completed. Flyers have been circulated with Arch Notes and the Ottawa Archaeologist, as well as our Chapter newsletter, and information has been sent to the Canadian Archaeological and American Anthropological Associations. An update concerning the projected budget (just under \$6,000) has been sent to Society Administrator, Charles Garrad. Dr. William Lovis (Michigan State University) and Dr. John O'Shea (University of Michigan) have both agreed to present papers at the theme session, as have a number of Ontario archaeologists. Efforts are being made to find a discussant for this session. Contributors to the open session so far include Charles Cleland, Martin Cooper, Charles Garrad, James Hunter, Scarlett Janusas, Michael Kirby and Arthur Pegg.

Negotiations continue with Mr. Nick Spivak, the Andrew Westbrook site landowner, in connection with our Chapter dig and the SEED program project for which the Chapter received funding. Because of the unconfirmed nature of the Westbrook project and other factors, the executive has decided to postpone our Chapter picnic until August.

Other matters of discussion included the Chapter bus trip, the addition of a presentation by John Peters and Rob Pihl at our May meeting and Dr. Gerald Killan's biography of David Boyle. Dr. Killan recently received another award for his book and members are encouraged to purchase the remaining volumes in stock with the Chapter at the bargain price of \$13.00!

SOCIAL REPORT

SEED PROJECT

Our Chapter student employment project will commence June 17th, under the direction of Mr. Bob Mayer. Job applications for the three positions should be filed with the London office of Employment and Immigration Canada at 120 Queens Avenue (Project number 5114EK5). Those Chapter members who wish to volunteer as excavators or supervisory staff on the project are encouraged to contact an executive member or call Bob Mayer at 225-2300.

CHAPTER BUS TRIP

Following extensive consultation with Thor Conway, the Ministry's Northeastern Regional Archaeologist, we offer the following itinerary:

Friday, June 28

5:30 P.M. Leave London and drive north to Tobermory. Camp overnight, possibly at Uncle Claude's campground.

Saturday, June 29

8:00 A.M. Breakfast and tour Tobermory.
11:20 A.M. Leave Tobermory by ferry to Manitoulin Island.
1:05 P.M. Arrive Manitoulin Island, lunch and visit the Providence Bay site and beach.
3:00 P.M. Drive to Sheguiandah, stopping at a Native craft centre.
5:00 P.M. Leave for the La Cloche Hudson's Bay Company Post.
Camp overnight at LaCloche.

Sunday, June 30

8:00 A.M. Breakfast and leave for Sault Ste. Marie.
12:00 noon Arrive at the Soo, lunch and then divide into two groups:
Group 1 - Travel north to the Agawa Bay pictograph site on beautiful Lake Superior.
Group 2 - Travel south into Upper Michigan on a chert quarry tour.
6:00 P.M. Return to Sault Ste. Marie and stay in a local motel.

Monday, July 1

8:00 A.M. Breakfast.
9:00 A.M. Tour of Ministry artifact collections at the M.C.C. lab.
10:00 A.M. Leave for St. Ignace and tour the Michigan State excavations at a seventeenth century Petun-Odawa site.
12:00 noon Lunch and then travel to Fort Michilimackinack for a tour of the excavations and excellent reconstruction.
2:00 P.M. Leave for London.
7:00 P.M. Arrive in London.

The approximate cost per person for this trip, excluding food and miscellaneous personal expenses will be around \$100.00. Those members and their friends who would like to attend are encouraged to contact Linda Gibbs evenings after 6:00 P.M. at 472-4915. Please sign up as soon as possible, so that we are not too late to book vans and also motel reservations in the Soo!

MAY CHAPTER MEETING

Those who attended our May 9 monthly meeting were disappointed to discover that Rob MacDonald, our guest speaker, had had car problems and was unable to present his talk on the Coleman village excavations. We look forward to his re-scheduled presentation during the fall.

Instead, the small gathering heard a talk entitled Ontario Hydro's Southwest Study: An Update on the Bruce to London Supply Route and Archaeological Studies. John Peters (Ontario Hydro) and Rob Pihl (Mayer, Pihl, Poulton and Associates Inc.) provided members with an interesting insight into Ontario Hydro's attempt to conserve archaeological sites in the face of their proposed transmission line and station construction activities. The ultimate result of the consultant's prehistoric settlement pattern modelling will be of interest not only to conservation agencies, but the academic community and public interest groups as well.

THURSDAY NITE LABS

Our weekly get-togethers have been cancelled until next fall, due to Ministry field commitments. Your editor would like to thank everyone who turned out to help wash, sort and catalogue innumerable artifacts over the winter - especially THE REGULARS (Bob, Linda, Neal, George, Fred, Mike, Bob, Megan, etc.). My only apology for the never ending stream of chert flakes and fragments has to be....."an' sari"!

The following announcement unfortunately was received a day too late for inclusion in our April newsletter:

Museum of Indian Archaeology (London)
Lawson-Jury Building, 1600 Attawandaron Road, London, Ontario N6G 3M6
(519)473-1360

Summer Employment in Archaeology

Subject to the availability of funding, the Museum of Indian Archaeology, an affiliate of The University of Western Ontario, anticipates operating four archaeological projects in 1985. Generally, Anthropology/Archaeology students who are returning to University will be hired.

Salaries range from \$4 to \$10 plus/hour and include 4% vacation pay at the end of the project. Students will be expected to work 40 hours per week and approximately one weekend per month.

Projects include:

1. Reconstruction and very limited excavations of the Lawson Prehistoric Indian Village, a fifteenth century Neutral village in northwest London.
7 Student Assistants
2. Archaeological survey and test excavations in the City of London.
Crew required
Project Archaeologist - 4 months
2 Field Assistants - 4 months
3. Archaeological survey and excavations in the Crawford Lake region.
Crew Supervision - 15 weeks
2 Field Assistants - 15 weeks
7 Student Assistants
4. Salvage excavation of the Keffer site, a prehistoric Huron village, in the Town of Vaughan, Regional Municipality of York.
1 Assistant Manager - 20 weeks
1 Chief Cataloguer - 20 weeks
1 Crew Supervisor - 20 weeks
7 Field Assistants - 20 weeks
1 Data Manager - 20 weeks
1 Data Entry Person - 20 weeks
7 Student Assistants - 18 weeks

Note: Archaeological Student Assistants will spend part of the summer at each of the Lawson site, Crawford Lake project, and the Keffer site.

Accommodations will be provided in the Crawford Lake region (tents), and at the Keffer site (houses). In London, students must arrange their own accommodations (at University residences or elsewhere).

In all projects students are responsible for their own meals. Kitchen facilities will be available at Keffer and in the Crawford Lake region.

Send curriculum vitae with 3 references to
William D. Finlayson
Executive Director
Museum of Indian Archaeology (London)

The following articles are presented to provide Chapter members with a better understanding of recent precedent setting legal proceedings in Hamilton and the resultant archaeological salvage and analysis activities conducted by the local Ministry office.

THE FREELTON/MISNER SITE LOOTING AND PROSECUTION

William A. Fox

The sequence of events leading up to the looting of the Freelton village and Misner cemetery began in 1982. In response to a rumour communicated to our office by Archaeological Conservation Program member Mr. George Gee, the writer requested that Messrs. Paul Lennox and William Fitzgerald investigate the Freelton area for an undisturbed cemetery site. George had heard of this site's existence from Dr. William Noble of the McMaster University. It was reasoned that if such a site existed, steps should be taken to protect it.

Lennox and Fitzgerald surveyed the vicinity during the month of October 1982 and discovered artifacts in a bushlot. Consequently, the writer visited the landowner on April 20, 1983 in order to obtain permission for a more detailed survey of the property. Permission was granted and a crew consisting of Messrs. Paul Lennox, Ian Kenyon, Neal Ferris and the writer spent the day of April 21 delineating the village extent. The site was found to be of moderate size (roughly 1.1 hectares) and to be virtually undisturbed. There were none of the pot holes in midden (refuse) deposits typical of looting activities. In fact, many circular depressions in the forest floor appeared to be the result of former Native excavation of food storage pits. The Freelton village appeared to be beautifully preserved and the most intact site of its kind known to the archaeological community.

A telephone report on the discovery was made to both the Ministry's Chief of Archaeology, Mr. Allen Tyyska and Archaeological Survey of Ontario Data Base Co-ordinator, Ms. Donna McNeil on April 22.

Two days were spent on the Freelton Village (May 11 and 12, 1983) in survey to produce a contour map of the site. Mapping was accomplished by Messrs. Ian

Kenyon, Neal Ferris and the writer. Middens and storage pits, as well as present property lines were also mapped. Fifteen centimeter square units were excavated in five of the eleven mapped middens in order to obtain a diagnostic artifact sample with as little disturbance to the site as possible. The writer was assisted in this work by Mr. William Fitzgerald. All unit soil was bagged and removed for flotation (water screening) in London. The artifact recovery rate per unit area was excellent (the middens were rich in artifacts) and the diagnostics suggested a date of c.1640 A.D. for the village occupation.

Telephone calls on May 16, 1983 led to an onsite meeting between senior ministry staff from Toronto and the property owners. A tour of inspection was made on May 27 with Mr. Allen Tyyska and Mr. Peter Carruthers. The options available for protecting this important site were discussed at that time.

The matter was considered at the June 1983 Archaeological Committee Meeting of the Ontario Heritage Foundation. Considerable interest was expressed by the committee in actively participating in conserving the Freelton Village, possibly through the establishment of a heritage conservation easement. The village was Borden registered on August 5 and restricted distribution of the data was requested due to the site's importance and vulnerability. Following telephone communications between the landowner, the Ministry's London archaeological office and the Ministry of Citizenship & Culture Toronto Head office, a draft agreement was produced by the Ministry of Citizenship & Culture, Legal Services Branch by November of 1983. Bureaucratic delays resulted in delivery of review copies of the draft agreement to the owners on January 12, 1984.

The solicitor for the property owner reviewed the draft agreements and advised the London archaeological office in writing on March 13 that the outright purchase of the site property was the only satisfactory course of action to the owners. No easement agreement would be suitable. The landowners subsequently contacted our office by telephone to indicate that they were still interested in negotiating an easement agreement and consequently, a meeting was held at their home on March 26. Additional funds were requested by the property owners.

Numerous telephone communications resulted in the production of revised draft agreements during April of 1984. Further bureaucratic delays resulted in an early June receipt of the revised agreements. The site owners were not pleased with certain conditions, and thus a second meeting was held at their home on June 21. This was again attended by the writer and also by Mr. Dan Schneider of the Ministry Toronto office. A suitable agreement appeared to have been reached by the end of the meeting. Funds being available, the Ontario Heritage Foundation was prepared to move on closing the easement agreement.

No final easement agreement had been signed by September 13, when the writer was notified by the family that the Freelton village appeared to have been looted. Their son had noticed evidence of extensive digging during a recent visit to the site. A September 14 tour of the village by the writer confirmed the unfortunate truth of the report. The writer then visited four adjacent farms to ask about the event. Only one individual appeared to know anything concerning the village and looter activity. Mr. Allen Tyyska was notified in Toronto and the Hamilton-Wentworth Regional Police were contacted.

On September 17, the writer returned with Mr. Ian Kenyon to map the extent of looting disturbance. Constable William Gent of the Dundas detachment

responded to our telephone report but did not visit the village. Mr. William Fitzgerald was telephoned and requested to call Mr. George Parkin in an effort to learn who had looted the Freelon village. The destruction recorded was as follows:

| <u>Midden</u> | <u>Percent of Area Dug Over</u> |
|---------------|---------------------------------|
| 1 | 100% |
| 2 | 75% |
| 3 | 10% |
| 4 | 50% |
| 5 | 100% |
| 6 | 100% |
| 7 | 100% |
| 8 | 60% |
| 9 | 40% |
| 10 | 100% |
| 11 | 30% |

In addition, several other previously undocumented midden deposits had been looted and small shovel holes were abundantly evident throughout the village area (presumably related to metal detector activity).

During a September 20 telephone conversation with Constable Gent of the Hamilton-Wentworth Regional Police, the writer mentioned Mr. Fitzgerald's efforts and explained the potential difficulties associated with interrogating the knowledgeable adjacent landowner. There was a possibility that he would notify the looters, who had used his farm for access to the Freelon village, should the police become involved. Mr. Fitzgerald was unsuccessful in obtaining information by the end of September and so the writer attempted an onsite meeting with the police on October 1. Detective Sergeant Don Crath met the writer in Dundas and discussed the case. He was hesitant to pursue the matter due to the untested nature of the Ontario Heritage Act. Nevertheless, Don Crath initiated the investigation shortly thereafter.

Telephone communication between the writer, Sgt. Don Crath and Mr. Allen Tyyska continued throughout the first week of October. The site owners contacted the writer by telephone on the evening of October 8, reporting that a Mr. Allen Tweedle of Strabane had witnessed the looters using metal detectors on the site. Sgt. Crath was notified of this fact on October 9. On October 10, Don Crath contacted the writer by telephone suggesting a warrant search of the Richer and Parkin homes the following week. Information received later in the day from an associate of Gary Richer led to a proposal by Don for a stake-out on the Freelon village during Saturday, October 13.

Following several calls to the Dundas detachment and Mr. Allen Tyyska, the writer joined Sgt. Don Soloman and a team of four constables in a stake-out of the village from 9:30 A.M. to 2:30 P.M. No looters visited the site. A telephone discussion with Don Crath during October 15 led to a meeting at the central station of the Hamilton-Wentworth Regional Police on the morning of October 16. Warrants were obtained for entry to the residences of Messrs. Gary Richer, Gordon Jackson and George Parkin and lawful seizure of artifacts and metal detectors. In an attempt to locate the suspected site of Historic Neutral cemetery looting by Mr. Richer, visits were made to several known Hamilton area cemetery sites. Thankfully, none of these had been visited by Mr. Richer.

We returned to Hamilton and the residence of Mr. Richer. Mr. Gary Richer was informed of his rights and subsequently confessed to illegal excavations on the Freelon village. He accompanied Sgt. Crath and the writer to the site and pointed out areas of former looting. He also admitted to looting a previously unknown and undisturbed cemetery associated with the Historic Neutral Misner village. A field check confirmed the truth of this confession, as Mr. Richer directed us to an area of recent disturbance containing fractured human bone in Mr. Misner's field.

Subsequent visits to the Jackson and Parkin residences led to similar confessions and the recovery of a large number of artifacts from the Freelon village and Misner cemetery. Mr. Tyyska was briefed on the searches that evening.

On the morning of October 17, Sgt. Crath and the writer returned to the Richer residence to obtain his Freelon village and Misner cemetery artifacts. Two hours of questioning were required to obtain all the material. During this time, Mr. Richer indicated that Mr. Jackson had called him following our visit the previous evening, contrary to instructions from Sgt. Crath. Mr. Richer had called Mr. Parkin, contrary to Sgt. Crath's instructions, prior to our visit to Mr. Parkin the previous day, allowing time to dispose of his Misner cemetery artifacts and metal detector.

Following the meeting with Mr. Richer, we drove with two Identification Officers to the Misner cemetery to photo-document the looting. The tenant farmer agreed to call Sgt. Crath if anyone was seen on site. We returned to central station and photo-documented the seized goods. The artifacts were then turned over to the writer and transported to the London Archaeological Office of the Ministry of Citizenship & Culture.

Site catalogues seized from Richer and Jackson were most enlightening concerning their former field activities and led to the documentation of several previously unregistered sites. Upon completion of confiscated artifact cataloguing, the writer was astounded by the totals. Only a few days had been spent by the looters on the Misner cemetery and yet they had acquired over 8,800 artifacts - over 8,700 of which were glass, stone and shell beads! From the Freelon village they had taken over 700 artifacts, including 89 complete iron axes! The evidence of their destruction was both staggering and horrifying.

In order to assess looting damage to the Misner cemetery and prevent future agricultural destruction of the exhumed human remains a salvage excavation project was initiated on October 30, 1984. Twenty-two days were spent on the site uncovering 176 square meters. As ever, the work could not have been accomplished without a tremendous amount of volunteer assistance - 768 hours! Archaeological Conservation Program members, O.A.S. members, M.T.C. staff from London, M.C.C. staff from Toronto and faculty and students from the Universities of Western Ontario, Toronto and McMaster all contributed much time and effort to the successful completion of the project by November 25. We will never forget Rosemary Prevec's homemade cookies and unorthodox ground thawing techniques!

The sad picture that emerged was that over a few short days the looters had destroyed approximately one quarter of the cemetery, exhuming 65 individuals! There was little way of determining the exact form of the looted graves. The crew exposed, but did not exhume, three adjacent grave pits, all of which

contained the remains of a single individual. Other undisturbed grave pit sizes and looted skeletal information strongly suggest that Richer, Jackson and Parkin dug through a large communal grave, in addition to several individual interments.

Washing, cataloguing and analysis of the artifacts recovered from the looters' backdirt continues. Much human bone, a formerly complete clay effigy rattle pipe, several brass kettles and turtle shell rattles fell prey to their shovels, while they also missed over 700 glass beads, thousands of shell beads and a complete vasiform stone pipe! Ian's article which follows describes the total glass bead assemblage. Rosemary Prevec has completed the faunal analysis, while numerous studies concerning the human skeletal remains have been accomplished at the University of Toronto under the direction of Drs. Molto and Melbye.

The evidence against Richer, Parkin and Jackson was overwhelming; including, witnessed confessions and even ceramic cross-mends between material acquired through Ministry excavations on the Freelon and Misner sites and that confiscated from the defendants! Consequently, following considerable negotiation between the Crown and defence, pleas of guilty were entered in court on April 15, 1985. What followed that day was several hours of testimony and cross-examination, for the purposes of sentencing, concerning the severity of the offences. The Province was most ably represented by Michael Bader of the Crown Law Office, Ministry of the Attorney General. Mr. Bader had kindly agreed to take on the case at the request of M.C.C.'s Legal Services Branch.

Being the first prosecution under Part VI of the Ontario Heritage Act, there was no precedent on which to base sentencing. The offenses were obviously extremely severe, which made the case all the more difficult. With no great hope of success, the crown requested that sentencing include \$5,000.00 fines to Jackson and Parkin, and a \$500.00 fine to Richer who was on welfare, as well as forfeiture of the looted artifacts and metal detectors recovered by warrant. What ultimately transpired is presented below as abstracted from the transcript of sentencing pronounced on May 1 by R. Robins, Justice of the Peace.



Counsel for the defense
B. De Rubeis, Esq.
(sketch by Janie Fox)

SENTENCING

HIS WORSHIP: This is a sentencing with regard to The Ontario Heritage Act, Section 69(1). I might point out that the maximum penalty is \$10,000.00 or one year, or both.

The charge before the court against George Parkin, Gary Richer and Gordon Jackson, on which a plea of guilty was entered is as follows (as amended) by consent:

That in and between the 14th April, 1984 to and including the 14th day of October, 1984 at Lot 8 Concession 2, Ancaster Township, Regional Municipality of Hamilton-Wentworth, did carry out archaeological exploration, an archaeological survey or field work, without a license as required by S. 48(1) of the Ontario Heritage Act R.S.O. 1980 C. 377 and did thereby commit an offence contrary to S. 69(1) of the said Act.

The objects of this Act are set out in Part II relative to the Ontario Heritage Foundation (Sec. 7) and in particular, to this type of charge in general, subsection (d) to preserve, maintain, reconstruct, restore and manage property of historical, architectural, archaeological, recreational, aesthetic and scenic interest.

I must point out at this time that the "authority" has, in response to native peoples concerns in respect to native burial sites, and prior to commencement of the period in question in these charges, placed a moratorium on the disturbance of grave sites except under extreme conditions such is the concern for not only our historical past but also the sanctity of these locations in respect to native culture and religion.



The accused before His Worship R. Robins

Evidence submitted by Exhibit 26 (a licence to conduct archaeological exploration, survey or field work) #83-77 issued to George Parkin would have seemed to cover the activity of the three defendants to a large degree prior to the period in question, however, evidence before the court indicates the requirements of the licence as set out on the reverse side were not met, also the requirement of continuance of said licence was not met as application for renewal was not made prior to expiry date of December 31st, 1983. See Section 50(2) of the Ontario Heritage Act.

Application for a licence was made for the year 1984, however, licence was not issued. Therefore, no licence was in effect for the period in question.

In general over a period of time, and covering the period as set out in the information, the defendants at various times, either separately or together, visited the sites in question for an activity that under the most lenient interpretation of "archaeology" would not be accepted by this court as such, but rather as "looting" in that no care or consideration of the historical importance of the sites or the spiritual value of the burial ground was taken or in fact, in the opinion of the court, even considered. Evidence of non-compliance with the conditions of the licence prior to the charge before the court indicates an atmosphere of complete indifference to the law as such and verifies the thoughts of the court that no archaeological purposes were pursued rather the sole purpose is "looting" and in this it is suggested that the result goes well beyond private collections.

Counsel for the defence made reference by way of comparison between historical buildings and their value and the digging, and suggested that the digging was of lesser importance. I totally disagree. The disruption of history dating back to 1640 A.D. in what has been described as a Neutral Indian Village site, combined with the disecration of a burial site which has to be considered as of great importance spiritually to a great Indian Nation, one which generally has the protection of the Province of Ontario through the process of moritorium and likened to the extermination of a species.

This prosecution, as pointed out by Mr. William Fox, is the first for Ontario and its application, in the courts opinion must reflect a concern not only of the Government through the Ontario Heritage Act, but also the people of Ontario and in particular the native people, their historical and spiritual past and beliefs. I might point out at this time I have seriously considered gaol in conjunction with a fine, however in light of Crown representation regards penalty, I find as follows:

With regard to Mr. Gordon Jackson, described as being a former member of the Ontario Archaeological Society, age 59, retired, married, three children, with interests in artifacts since childhood, he has no record, and it would appear to the court that he was in a position to know that what he was doing was totally wrong and in direct opposition to the Ontario Heritage Act and the standards of Archaeology. Under all the circumstances outlined, I impose a fine of \$7,000.00.

George Parkin, age 37, described as a second generation looter, married, one child, interest in artifacts goes back several years, a prior possessor of a licence. The court has no doubts with regard to his knowledge of the requirements and he was aware that his actions were totally wrong and in direct opposition to the Ontario Heritage Act and the standards of Archaeology. Under all the circumstances outlined, I impose a penalty of \$7,000.00.

Gary Richer, born in 1942, single, unemployed, is the subject of a disability pension which has caused the Crown to suggest a much lighter penalty. The court agrees in some respect with regard to the application of a monetary penalty, however this person has shown an ability to perform in a function (albeit illegal manner) in this offence, therefore it suggests that his talents even if limited can be put to the test in community endeavour.

Now gentlemen, that is as far as I am going right at this time with regard to Mr. Richer. I have sought out the Elizabeth Fry Society, who in this community, looks after community involvement work, and I want to give her an opportunity to talk to Mr. Richer with regard to certain propositions of community service together with a fine, albeit a smaller fine. I have suggested to her, and she needs some time for this counsel, of course, and I have suggested that Mr. Richer be present in court at 1:30 this afternoon for final sentence. Now, counsel, is that in agreement with you?

MR. DeRUBEIS: Your Worship, I will make someone available at 1:30 this afternoon.

HIS WORSHIP: Now I understand, and of course the law states that Mr. Richer does not have to abide by this suggestion of community service in lieu of fine. This is something that he has to consider and which will be explained to him. He will then face my decision on a strictly monetary level if he does not.

MR. DeRUBEIS: Understood, Your Worship.

HIS WORSHIP: And further to all three, the court further orders that the artifacts as listed in Exhibit number 25 (that is the cataloguing of exhibits) be forfeited and deposited with The Ministry of Citizenship and Culture under the authority of Section 66(2) of the Ontario Heritage Act R.S.O. 1974 as amended to be held in trust for the people of Ontario. And further, the court orders confiscation of the metal detectors which were confiscated in relation to this investigation. Thank you, gentlemen.

Now, Mr. Richer, the representative from the Elizabeth Fry is Karen Siddall, she is here before the court. And the opportunity is now up to Mr. Richer to enter upon conversation with her, and a report will be forthcoming at 1:30.

MR. DeRUBEIS: Your Worship, with regard to Mr. Jackson and Mr. Parkin, pursuant to Section 67 of the Provincial Offences Act, Your Worship can extend the time for payment of the substantial fine.

HIS WORSHIP: Thank you. Yes.

MR. De RUBEIS: And my suggestion or submission to Your Worship will be something in the order of 90 or 120 days.

HIS WORSHIP: Are each of these gentlemen in the same position? Is this a general asking or have they got individual needs?

MR. DeRUBEIS: I think that would be...

HIS WORSHIP: Maybe we should ask. First, Mr. Jackson.

MR. DeRUBEIS: With respect to Mr. Jackson, Your Worship, if the fine could be extended to 120 days, as I say it is substantial.

HIS WORSHIP: 120 days, thank you, to pay. Mr. Parkin.

MR. DeRUBEIS: And similarly for Mr. Parkin.

HIS WORSHIP: 120 days for Mr. Parkin.

MR. DeRUBEIS: I take it, Your Worship, they need not come back.

HIS WORSHIP: They need not come back. They will receive notice from the court with regards to the conviction and the time to pay. The 120 days starts as of today.

MR. DeRUBEIS: Thank you, Your Worship.

HIS WORSHIP: The only one that needs to come back is Mr. Richer at 1:30. Thank you, gentlemen.

---WHEREAS THE COURT RECESSED AT 10:30 A.M. to 1:30 P.M.

---COURT RESUMES AT 1:38 P.M.

HIS WORSHIP: Some of this may well be repetition then, but Gary Richer, born in 1942, you are single and unemployed, subject of a disability pension, and the Crown had suggested a much lighter penalty, the court as I said before agrees with some regard, aspect of this matter, the application of a monetary penalty, however, this person has shown an ability to perform in a functional (albeit illegal manner) in this offence, therefore it suggests his talents even if limited can be put to the test in community endeavour, and this is what we are talking about. I thereby impose a fine in the amount of \$700.00, and place you on probation for a period of two years in which time subject to your agreement and subject to the supervision by the Elizabeth Fry Society through Karen Siddall or her co-workers, you shall perform 800 hours of community service rated at 200 hours completion each 6 months.

The court also orders and I would ask that Karen Siddall, would you undertake this, please, that a copy of Section 75 of the Provincial Offences Act R.S.O. 1980 as amended, be given to the defendant, Richer.

I will further order that the \$700.00 fine be paid within the period of probation. That gives you two years to pay that \$700.00.

Now as I stated before, gentleman, the court further orders that the artifacts as listed in Exhibit 25, in relation to your charge, be forfeited and deposited within the Ministry, or with the Ministry of Citizenship and Culture under authority of Section 66(2) of the Ontario Heritage Act R.S.O. 1974 as amended, to be held in trust for the people of Ontario.

And further, the court orders confiscation of the metal detectors which were taken in relation to this investigation. Do you understand that, sir?

MR. RICHER: Yes.

HIS WORSHIP: And with regard to the community service, are you agreed, sir?

MR. RICHER: Yes, sir.

HIS WORSHIP: Thank you. I leave it then in the capable hands of Karen Siddall to see that you carry out these provisions. Counsel, anything further?

MR. DeRUBIES: Nothing further, Your Worship, thank you.

HIS WORSHIP: Thank you.

The results were extremely gratifying and reassuring to all who are concerned with archaeological resource conservation in Ontario and Canada. Without the determination and detective skills of Sergeant Don Crath; the support and cooperation of the former Minister of Citizenship and Culture, the Honourable Susan Fish; the legal expertise of Michael Bader, both in and out of court; and the sensitivity of R. Robins, Justice of the Peace, this tremendous precedent could not have been established. Sincere thanks to all!

The epilogue to our narrative is the ongoing archaeological assessment of damage on the Freelon village site being directed by Mr. John MacDonald of McMaster University. Despite a severely constrained budget, the Ontario Heritage Foundation has generously provided funding for this important project. Only time will tell what has been irrevocably lost and what we have ultimately gained...

A PRELIMINARY REPORT ON THE MISNER CEMETERY GLASS BEADS

Ian Kenyon

Introduction

In what follows the glass beads from the Misner Cemetery (AhHa-27) will be described according to the Kidds' (1970) typological system (further developed by Karklins, 1982). The quantities of the bead varieties are listed in Table 1, where each of the 28 varieties is given a line number for ease of cross reference with the written descriptions provided below. For varieties that can not be matched in the Kidds' system, an asterisk is suffixed to the class designation in place of the variety number (e.g. IVa*). In some cases formally separate varieties are lumped together if at Misner their attributes intergrade (e.g. IVa6/IIa2). Where native modification of glass beads by grinding is frequent (as with varieties IIbb1, IIIk3), the unmodified and modified beads are listed on separate lines with the suffix "(gr)" added to the ground beads. Descriptions of size class diameters follows that of the Kidds: very small, under 2mm; small, 2-4mm; medium, 4-6mm; large, 6-10mm; very large, over 10mm.

In Table 1 the beads are listed according to their general provenance, including the 1037 beads that were looted from the site and formerly in the Parkin (P), Richer (R) and Jackson (J) collections. The table also lists the 733 glass beads recovered in the November 1984 excavations by the Ontario Ministry of Citizenship and Culture. These excavations centred on the looted area, which had a figure-eight outline about 6 metres long and 3 metres wide. In this report the beads recovered from the ploughzone and looting fill are listed in Table 1 according to whether they came from the north or south (N and S in Table 1) parts of the looted area, the S3 line of the grid being used as the dividing line. The only significant collection of glass beads from an undisturbed portion of the cemetery are the 158 specimens recovered from Grave 2 (G2 in Table 1). In addition there are 22 beads found in "other" (O in Table 1) contexts within the cemetery. The beads recovered from the north and south parts of the looted area are listed in Table 1 according to whether they were recovered from general excavation ("Exca."), where the soil was dry-screened with a 1/4" mesh, or water-screened ("Washed") through a 1/16" mesh.

Bead Descriptions

- (1) Ia14: The robin's egg blue tubular bead in the Richer collection displays some grinding.
- (2) IIa13: This category includes small white opaque round beads as well as some distorted specimens that have an oblong shape. These oblong beads are from the same units as the normal round beads and thus the former likely represent a "deviant" form accidentally produced during the manufacture of the "normal" round beads.
- (3) IIa40: The round robin's egg blue beads range in size from medium to large. Beads of this type are very common on early historic sites throughout Eastern North America.

Table 1. Glass Beads from the Misner Cemetery.

| | | <u>Looted Coll.</u> | | | <u>MCC Excavations, 1984</u> | | | | | | |
|----------------|-----|---------------------|----|----|------------------------------|----|--------|-----|----|-------|--|
| | | | | | Looted Cemetery | | | | | | |
| | | | | | Exca. | | Washed | | | | |
| Bead Variety | P | R | J | N | S | N | S | G2 | O | TOTAL | |
| (1) Ia14 | - | 1 | - | 1 | 1 | - | - | - | - | 3 | |
| (2) IIa13 | 1 | 2 | - | 2 | 1 | 3 | 10 | - | - | 19 | |
| (3) IIa40 | 10 | 9 | - | 3 | 1 | - | - | 15 | - | 38 | |
| (4) IIa42 | 1 | 2 | - | 1 | - | - | - | - | - | 4 | |
| (5) IIa* | - | 2 | - | - | - | - | - | - | - | 2 | |
| (6) IIa46 | - | - | - | 2 | - | 3 | 3 | - | - | 8 | |
| (7) IIa55/56 | 260 | 247 | - | 18 | 24 | 39 | 79 | - | 3 | 670 | |
| (8) IIa57 | 49 | 51 | - | 7 | - | 10 | 3 | - | - | 120 | |
| (9) IIa* | 7 | 4 | - | - | - | 1 | - | - | - | 12 | |
| (10) IIbb1 | 10 | 5 | 3 | 5 | - | - | - | - | - | 23 | |
| (11) IIbb1(gr) | 7 | 7 | 3 | 1 | 1 | - | - | - | 1 | 20 | |
| (12) IIIb* | 2 | 3 | 1 | - | 1 | - | - | - | - | 7 | |
| (13) IIIbb* | 1 | - | - | - | 1 | - | - | - | - | 2 | |
| (14) IIIk3 | 158 | 114 | 29 | 44 | 81 | 2 | 55 | - | 17 | 500 | |
| (15) IIIk3(gr) | 2 | - | 1 | 1 | - | 3 | - | - | - | 7 | |
| (16) IVa5/6 | 10 | 10 | - | - | - | 1 | - | 128 | - | 149 | |
| (17) IVa6/IIa2 | - | - | - | 1 | - | - | 122 | - | - | 123 | |
| (18) IVa7 | 2 | - | - | - | - | 2 | - | - | - | 4 | |
| (19) IVa* | - | - | - | - | - | - | - | 8 | - | 8 | |
| (20) IVa* | - | - | - | - | - | - | - | 7 | - | 7 | |
| (21) IVa* | - | - | - | 1 | - | - | - | - | - | 1 | |
| (22) IVb34 | - | - | - | 1 | - | - | - | - | - | 1 | |
| (23) IVb* | - | - | - | 1 | 1 | - | - | - | - | 2 | |
| (24) IVbb8 | - | - | - | - | 1 | - | - | - | - | 1 | |
| (25) IVk3/4 | 3 | 4 | 6 | 3 | 6 | - | - | - | - | 22 | |
| (26) IVn2 | 8 | 2 | - | 4 | - | - | - | - | - | 14 | |
| (27) IVn4 | - | - | - | - | - | - | - | - | 1 | 1 | |
| (28) IVn* | - | - | - | 2 | - | - | - | - | - | 2 | |
| TOTAL | 531 | 463 | 43 | 98 | 119 | 64 | 272 | 158 | 22 | 1770 | |

- (4) **Ila42:** Aside from their ovoid shape these beads are similar in size and physical properties to the previous category; both were recovered from the northern part of the looted area.
- (5) **Ila*:** The Richer collection contains two large rounded beads of robin's egg blue glass that have been ground. These may simply be modified versions of the Ila40 beads, but the three ground facets on one of these specimens suggests that it may have been produced by removing the three stripes from a Iib56 bead (round robin's egg blue with three white stripes), although no beads of this type have been found at Misner.
- (6) **Ila46:** A medium-sized shadow blue bead is present in both the north and south parts of the looted area.
- (7) **Ila55/56:** The most frequent bead type at the Misner cemetery is a round to circular (doughnut-shaped) dark blue bead. The majority of these are of a small size class although there are some medium size examples. Beads of this size and colour are difficult to spot during exavation, and the majority of the specimens from the MCC excavation were recovered by washing soil through a fine screen.
- (8) **Ila57:** These are ovoid versions of the previous class, and the Ila57 are likewise mostly of a small size although a few are medium size. There is a tendency for the round Ila55 beads to intergrade with the ovoid Ila57 beads. The ovoid beads, however, are almost entirely from the north half of the looted area in contrast to the round ones which mostly come from the southern half.
- (9) **Ila*:** This variety consists of distorted ("deviant") oblong beads similar in diameter and glass type to the previous two categories.
- (10) **Iibb1:** A large round red bead with three blue on white stripes is the most common type of striped bead at Misner. All five specimens found in the MCC excavation were from the north part of the looted area.
- (11) **Iibb1 (ground):** Examples of Iibb1 beads ground on three sides to remove their stripes are almost as common at Misner as the unmodified beads.
- (12) **IIb*:** These are tubular beads of a compound, three layer body (dark blue/ white/ dark blue) with white stripes. The 5 specimens from the Parkin and Richer collections have 8 white stripes, whereas the single example from the MCC collection, although lightly ground, originally bore about 14 white stripes. A heavily ground example in the Jackson collection resembles the IIIa12 bead (compound blue tube with no stripes) but this specimen is likely a IIb* bead with its stripes deliberately removed.
- (13) **IIbb*:** The two examples in this category are ground, probably to remove their blue on white stripes, of which only a trace remains. The beads have a cored red body and originally were likely similar to the Kidds' IIIbb1-5 types.
- (14) **IIIk3:** The second most popular bead type at Misner is a star bead with facettted ends. At Misner the size range of these beads is enormous, ranging from small to very large in diameter although the majority are medium (4-6mm) sized. Some of the larger specimens are egg-sized beads 20 to 25mm in diameter. In the MCC excavation, IIIk3 star beads tended to be concentrated in the southern portion of the looted area, particularly Units S4W0 and S6W0.

(15) IIIk3 (ground): Only half a dozen star beads had their exterior blue and white layers removed by grinding to reveal the underlying red of the third layer.

(16) IVa5/6 (small/medium): These beads are round to circular in shape with a translucent core and a red exterior; many have a clear exterior coating of glass although in some examples this has split off. Most range between 3 and 5.5mm in diameter. Although over a 100 specimens were recovered, most come from Grave 2, where it was the dominant type.

(17) IVa6/IIa2 (small/very small): These circular beads have a red body and range in diameter from 1.7 to 2.5mm. Beads of this category are with one exception restricted to the south part of the looted area, specifically Units S4W0 and S6W0. All but one of these tiny beads were recovered from fine-screen washing, and none are represent in the Richer, Parkin and Jackson collections. In later centuries beads of this size were usually used for embroidery work and it is tempting to regard the Misner specimens as such, but owing to the despoliation of the cemetery we will never know their context. The cores of these tiny red beads vary from translucent apple green (IVa6), to translucent glass mixed with swirls of opaque red, to entirely opaque red (IIa2). Although IIa2 and IVa6 beads are formally separate varieties in the Kidds' typological system, at Misner these two varieties intergrade and are found in the same units.

(18) IVa7: These beads are similar in structure and colour to the IVa5/6 beads only they have an ovoid shape.

(19) IVa*: These are circular, small diameter beads with a shadow blue body and translucent interior and exterior layers. They were found only in Grave 2.

(20) IVa*: Similar in size, shape and structure to the previous category, they differ only in colour, which is a robin's egg or turquoise blue. They likewise were found only in Grave 2.

(21) IVa*: This medium-size ovoid bead is of compound construction with three layers as follows: an inner core of translucent glass, a middle layer of milky white glass, and a thick exterior covering of navy blue glass. The only known glass bead from the nearby Fonger village site is of this rare variety.

(22) IVb34: The single example of this type is a dark blue bead of large size with about 16 white stripes.

(23) IVb*: These two medium sized specimens are similar to type IVb2 in that they have a translucent core, a red exterior and thin black stripes. One bead has 9 stripes and the other 10.

(24) IVbb8: An medium-sized ovoid red bead with a translucent core has three blue on white stripes.

(25) IVk3/4: This category is composed of large-sized rounded star beads and, as typical for Ontario, they are much less common at Misner than the facettted IIIk3 form.

(26) IVn2: These are large-sized rounded star beads with a white outer layer and alternating blue and red stripes.

(27) IVn4: Similar in size and shape to beads of the previous category, this star bead differs in that it has alternating yellow and blue stripes.

(28) IVn*: Another large-sized rounded star bead type has blue stripes only. It, like the IVn2 beads, comes from the north half of the looted area.

Discussion

In evaluating the date of the Misner Cemetery, two similar but separate questions must be asked: What is the date range of the cemetery as a whole and what is the date range of the material recovered? If the Grimsby site can be taken as a guide, there is no reason to believe that the beads so far recovered at Misner are representative of the cemetery as a whole. At the Grimsby site (W. Kenyon, 1982) there is good evidence that the cemetery developed over some length of time (Kenyon and Fox, 1982), so that the findings from one portion of the site are not necessarily of the same type or period as those from another part. It is uncertain whether the complex pattern found at Grimsby is typical of Neutral cemeteries in general, for most of the other known cemeteries have long ago been dug like potatoes. The MCC investigation at Misner indicates that the cemetery probably consisted of a number of mass and individual burial pits, much like Grimsby, and hence it is quite possible that these interments may have been made over the course of a decade or more. The extant artifact sample from Misner, however, derives from only a restricted area of the cemetery, but even so there is some suggestion that Grave 2 is later in date than the looted burial pit only a few metres to the south.

The pre-1650 Ontario glass bead sequence has been divided into three numbered periods, each characterized by certain glass bead varieties (Kenyon and Kenyon, 1983; Fitzgerald, 1982 and 1983). Curiously, the available glass bead assemblage from Misner can not be precisely fitted into this scheme -- surely not owing to any deficiency in its original formulation! As a whole, the Misner collection is neither very early nor very late. It lacks, for instance, the "frit-core" beads characteristic of Period 1 (Kenyon and Kenyon, 1983) and it also lacks the red tubular (Ia1) and medium-size solid red round (IIa1) beads that are the two dominant types on sites of the 1640's (Kenyon and Fitzgerald, 1984). Misner, then, is a site of intermediate date, spanning Periods 2 and (early) 3 in the numbered sequence. Typical Period 2 beads at Misner are dark blue ovoid beads (IIa57), the white rounds (IIa13) and usually the dark blue round beads (IIa55/56). Also typical of Period 2 are many of the polychrome beads found at Misner: the white striped blue tubes (IIIb*), the blue-on-white striped red tubes (IIIbb*), and a similar striped bead of ovoid form (IVbb8). Found in all three periods are the faceted star beads so common at Misner. The most frequent striped bead at Misner, the blue-on-white striped round red bead (IIbb1), is found in Periods 2 and 3. Characteristic of Period 3 are red circular and round beads (IVa5/6) and robin's egg blue round beads (IIa40), although the latter type are also common in Period 1. Interestingly, aside from the tiny red circular beads found in the southern portion of the looted area, these "classic" Period 3 bead types were concentrated in Grave 2 rather than in the looted burial pits, suggesting that Grave 2 might be slightly later in date. Oddly, certain key Period 2 types are entirely absent, notably the white ovoid and tubular beads, which are so common on earlier sites.

In sum, the beads from Misner indicate that it dates to the Period 2/3 transition. I have suggested (1984) that this transition may have taken place between 1616 and 1624, although Fitzgerald (1982; 1983) proposes 1628-32. Regardless, the Misner cemetery, at least as represented in the extant collections, should date sometime between circa 1615 and 1635.

The Misner cemetery excavations raise questions concerning recovery rates of beads. At Misner the glass beads range in size from mote-like specimens less than 2mm in diameter to the egg-sized star beads 20 to 25mm in diameter. Table 1 reveals some evident differences in recovery rates, which would have been even more revealing if the beads were further subdivided by size classes. Almost all of the egg-sized star beads were found by the looters and all of the very small red beads (IVa6) during the MCC excavation -- perhaps not surprising results. Yet, the "scientific" MCC excavations using the 1/4" screen probably had a recovery rate little better than that of the "unscientific" pothunters. It was only when the fill was fine screened with the 1/16" mesh that anything like an adequate and representative sample of beads was obtained. It follows that in any future excavations of intact or looted historic Neutral burials the utmost care should be taken in fine-screening backdirt. It is distressing to realize that most of the extant collections of glass beads from Neutral cemeteries (with the notable exception of Grimsby) were excavated with archaeological techniques little better than that of Parkin and Co. This would certainly suggest that studies based on quantitative comparisons of glass bead frequencies from sites that have excavated with vastly different procedures may very misleading. One wonders, then, whether quantitative studies such as Kenyon and Fitzgerald's (1984), with its mock-scientific sheen, are measuring any real aspect of the past or merely the differing levels of incompetency with which sites have been dug.

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A NOTE ON THE GLASS BEADS FROM THE FREELTON VILLAGE SITE

Ian Kenyon

There are only 9 extant beads from the Freelton Village site. Despite the extensive looting of the site by Parkin, Richer and Jackson, they recovered a meagre total of 7 beads. Limited test excavation by the Ministry of Citizenship and Culture in 1983 produced 2 additional specimens. Whether this apparent scarcity of glass beads at Freelton is a reflection of the careless digging of the pothunters or a genuine scarcity is a question that can only be answered by future work on the site, with due attention being paid to the fine screening (e.g. 1/16" mesh) of cultural deposits.

Bearing in mind the interpretative limitations of a sample of only 9 beads, everything about the Freelton collection indicates that it is a relatively late Neutral site (i.e. Period 3b). A date of the late 1630's or 1640's is suggested, since the Freelton beads are similar to those found at the nearby late Neutral villages of Hood and Hamilton, and, going further afield, to the Jesuit Missions of Ste Marie I (1639-49) and Ste Marie II (1649-50).

| Variety | Length | Dia. | Collection | Comments |
|---------|--------|-------|--------------|----------------------------|
| Ia1 | (10.1) | (4.2) | MCC Midden 1 | Ground to square x-section |
| Ia1 | (11.3) | 3.6 | MCC Midden 2 | |
| Ia1 | (23.6) | 5.9 | Parkin | Lightly ground |
| IIa1 | 6.9 | 5.7 | Jackson | |
| IIa40 | 6.2 | 7.5 | Parkin | |
| IIIa1 | 8.6 | 2.5 | Jackson | Very thin core |
| IIIc'3 | 32.2 | 8.2 | Parkin | |
| IVa5 | 5.7 | 5.2 | Jackson | Clear outer casing |
| IVa8 | 5.6 | 5.9 | Parkin | |

(Measurements in mm; those enclosed in brackets indicate incomplete dimensions)

STATEMENT OF INCOME AND EXPENSES FOR YEAR ENDING DEC. 31, 1984

Balance on Hand January 1, 1984

581.63

Receipts for 1984

| | |
|-----------------|----------------|
| Memberships | 751.90 |
| OAS Grant | 200.00 |
| Bus Tour | 800.00 |
| Publications | 155.00 |
| Bus Tour Refund | 430.00 |
| Bank Interest | 33.71 |
| | <u>2370.61</u> |

Total Receipts

2370.61
2952.24

Disbursements

| | |
|-------------------------------|----------------|
| OAS Toronto Memberships | 48.00 |
| Printing and Postage for Kewa | 1013.44 |
| Bank Service Charge | 7.00 |
| Purchase Publications | 275.00 |
| Bus Tour Deposit | 530.00 |
| Bus Tour Refunds | 803.50 |
| Overdraft Charge | 7.50 |
| Membership Cards | 41.99 |
| | <u>2726.43</u> |

Total Disbursements

2726.43

Balance On Hand December 31, 1984

225.81
2952.24

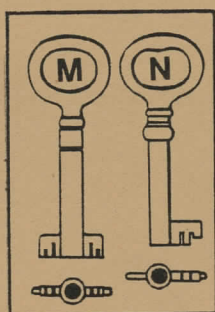
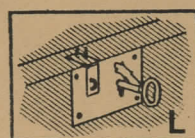
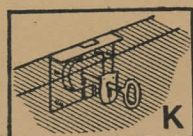
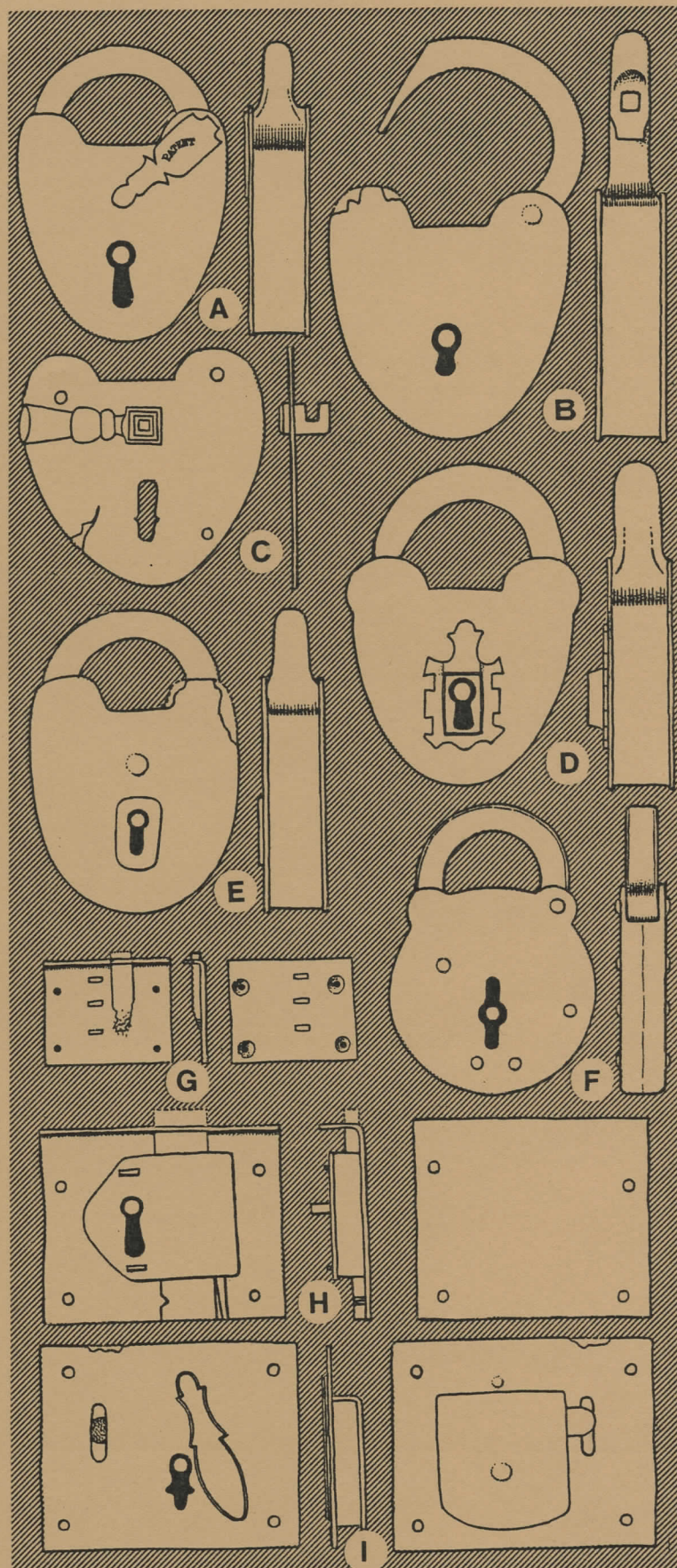
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NINETEENTH CENTURY NOTES

PADLOCKS AND LOCKS Tim Kenyon

Lockmaking, a rapid expanding industry in the 19c with its heyday in the mid 19c, experienced many new inventions. The most notable of these was the Yale cylinder lock. Patented in 1848 by American Linus Yale, it was further developed by his son Linus Jr. and has proven to be the most popular lock of all times. The padlocks and locks (A to I) are from a series of 19c sites on the Lower Grand River. Unlike the Yale locks, these padlock and lock styles originated in the 18c and continued to be manufactured and used throughout the 19c. The padlocks A to E are basically bag-shaped with ears and have a iron front, side and back that enclosed the lock mechanism. They were opened by an iron single bit barrel key (N). A later type of padlock (F) has two piece iron housing and used an iron double bit barrel key (M). A and C padlocks display brass pivoting key covers, while examples E and D have brass escutcheon plates. Drawing J illustrates how the padlocks might have been used with an early type of hasp hinge. The iron drawer lock (H) or the brass till lock (G) were mounted on the back of a drawer (K) and was opened by a single bit barrel key. The iron slot loop hasp lock, with a brass pivoting key cover (I), attached to the front of a chest (L). A single bit barrel key operated a sliding bolt that locked a hasp hinge.

Haldimand County sites: Rachel Sheehan, c1815-1855 (B); David Rogers, c1840-1875 (C and E); Pat McDonald, c1835-1870 (D); McSorley's Dump, c1880-1915 (F); A. Link, c1860 (G).
Brant County site: Mohawk Village (A, H and I).



0 5 10 15 cm